

HOUSE BILL No. 1189

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-10-1-31; IC 8-10-5.

Synopsis: Ports of Indiana. Provides that a person that seeks to establish additional commercial ports on Lake Michigan or the Ohio River must submit to the commission of the ports of Indiana (ports commission) a market study concerning the economic costs and benefits of additional commercial ports. Provides that, before a local port authority may construct or operate a port or other facility on navigable waters: (1) the local port authority must submit a report to the ports commission and to the governor; (2) the ports commission must respond to the report; and (3) the governor must approve the report. Provides that, after June 30, 2014, a local port authority: (1) may not be created; or (2) may not expand its jurisdiction; to include navigable waterways. Makes a technical correction.

Effective: Upon passage; July 1, 2014.

Soliday

January 14, 2014, read first time and referred to Committee on Roads and Transportation.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1189

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-10-1-31 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 31. (a) A person that seeks to establish**
4 **additional commercial ports on:**
5 **(1) Lake Michigan, including channels that are ordinarily**
6 **navigable to Lake Michigan; or**
7 **(2) the Ohio River, including channels that are ordinarily**
8 **navigable to the Ohio River;**
9 **must submit to the Indiana port commission a market study**
10 **concerning the long and short term potential economic**
11 **opportunities and consequences of establishing the additional**
12 **commercial ports.**
13 **(b) A study described in subsection (a) must include the**
14 **following:**
15 **(1) Current data and statistics on Great Lakes shipping**
16 **trends.**



(2) An analysis of the federal permitting process administered by the United States Army Corps of Engineers.

SECTION 2. IC 8-10-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. As used in this chapter:

(1) "Port authority" means a port authority created pursuant to authority of this chapter.

(2) The terms "port" or "harbor" may be used interchangeably and when used in this chapter shall mean any area used for servicing, storing, protecting, mooring, loading or unloading, or repairing any watercraft, on or adjacent to any body of water which may be wholly or partially within or wholly or partially adjacent to the state of Indiana. The terms include a breakwater area.

(3) The term "watercraft" shall mean any vessel, barge, boat, ship, tug, sailingcraft, skiff, raft, inboard or outboard propelled boat, or any contrivance known on March 13, 1959, or invented after March 13, 1959, used or designed for navigation of or use upon water, including a vessel permanently anchored in a port.

(4) "Publication" means publication once a week for two (2) consecutive weeks in a newspaper of general circulation in the city, county, or counties wherein such publication is required to be made.

(5) The term "governing body" shall mean the legislative authority of the governmental unit or units establishing or having established a port authority under the provisions of this chapter.

(6) "Navigable waters" means navigable waters of the United States (as defined in 33 CFR 329).

(7) "Ports commission" refers to the commission of the ports of Indiana created by IC 8-10-1-3(b).

SECTION 3. IC 8-10-5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5.5. **(a) Except as provided in subsection (b),** any port authority that is created under this chapter may expand its jurisdiction to include any other unit (as defined in IC 36-1-2-23) that desires to join the expanded authority. The legislative body (as defined in IC 36-1-2-9) of each unit that is in the authority shall by ordinance determine the number of directors on the board of the expanded authority and any other terms of the expansion that it considers appropriate. The legislative body of each unit that desires to join the authority shall by ordinance agree to join the authority and to accept the terms of the ordinance that provides for the expansion.

(b) After June 30, 2014, a port authority may not expand its jurisdiction to include navigable waters.



SECTION 4. IC 8-10-5-7 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2014]: Sec. 7. **(a) Subject to subsections (b) and (c),** the area of jurisdiction of a port authority ~~shall include:~~
includes:

(1) all of the territory of the political subdivision or subdivisions creating it; and

(2) a facility that is owned or operated by the port authority, whether or not the facility is within the boundaries of the political subdivision or subdivisions that created the port authority.

~~however,~~ **(b)** The same area may not be included in the jurisdiction of more than one (1) port authority.

(c) The jurisdiction of a port authority created under this chapter after June 30, 2014, does not include navigable waters or a facility that is located on or adjacent to navigable waters.

SECTION 5. IC 8-10-5-8, AS AMENDED BY P.L.229-2011, SECTION 100, IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) A port authority is an instrumentality of the state and, **subject to section 8.2 of this chapter,** shall have full power and authority independent of any political subdivision to do the following:

(1) Purchase, construct, sell, lease, and operate docks, wharves, warehouses, piers, and other port, terminal, or transportation facilities within its jurisdiction consistent with the purposes of the port authority and make charges for the use thereof.

(2) Straighten, deepen, and improve any canal, channel, river, stream, or other water course or way which may be necessary or proper in the development of the facilities of such port.

(3) Establish dock lines, piers, and other facilities necessary to the conduct of pleasure boating within the territory under the jurisdiction of the port authority.

(4) Regulate and enforce the regulation of all uses and activities related to the port in the area under the jurisdiction of the port authority and determine the use of land adjacent to waters under the jurisdiction of the port authority within a reasonable distance from the shore lines of such waters. However, this subdivision does not:

(A) affect the requirement that special standards for the safe operation of watercraft on public waters must be adopted by rule by the department of natural resources under IC 14-15-7-3; or

(B) authorize the assessment by the port authority of a charge or fee for the passage of a watercraft through the navigable



1 waters of the state.
2 (5) Acquire, own, hold, sell, lease, or operate real or personal
3 property for the authorized purposes of the port authority.
4 (6) Apply to the proper authorities of the United States pursuant
5 to appropriate law for the right to establish, operate, and maintain
6 foreign trade zones within the limits of the port authority and
7 establish, operate, and maintain such foreign trade zones.
8 (7) Exercise the right of eminent domain to appropriate any land,
9 rights, rights-of-way, franchises, easements, or other property
10 necessary or proper for the construction or the efficient operation
11 of any facility of the port authority, award damages to landowners
12 for real estate and property rights appropriated and taken or
13 injuriously affected, and in case the board of directors of the port
14 authority cannot agree with the owners, lessees, or occupants of
15 any real estate selected by them for the purposes herein set forth,
16 proceed to procure the condemnation of the same as hereinafter
17 provided, and in addition thereto, when not in conflict or
18 inconsistent with the express provisions of this chapter, proceed
19 under the general laws of the state of Indiana governing the
20 condemnation of lands and the rights-of-way for other public
21 purposes which may be in force at the time, and the provisions of
22 such laws are hereby extended to ports and harbors and to the
23 properties of port authorities as provided for herein so far as the
24 same are not in conflict or inconsistent with the terms of this
25 chapter. In any such proceeding prosecuted by the board of
26 directors of a port authority to condemn or appropriate any land
27 or the use thereof or any right therein for purposes permitted by
28 this chapter, the board and all owners and holders of property or
29 rights therein sought to be taken shall be governed by and have
30 the same rights as to procedure, notices, hearings, assessments of
31 benefits and awards, and payments thereof as are now or may
32 hereafter be prescribed by law for the appropriation and
33 condemnation of real estate, and such property owners shall have
34 like powers and rights as to remonstrance and of appeals to the
35 circuit or superior courts in the county in which such property
36 sought to be appropriated is located. However, the payment of all
37 damages awarded for all lands and property or interests or rights
38 therein appropriated under the provisions of this chapter shall be
39 paid entirely out of funds under the control of such port authority,
40 except for the following:
41 (A) Upon written application of any property owner affected,
42 any municipal corporation, or, as to areas outside the



boundaries of a municipal corporation, any county, participating in the creation of a port authority, after ten (10) days written notice to the port authority and public hearing had thereon, may revoke the right of eminent domain to be exercised by the port authority as to any parcel or parcels of land inside its borders within sixty (60) days after the port authority has by resolution announced the lands, rights, rights-of-way, franchises, easements, or other property to be taken.

(B) Nothing herein contained shall authorize a port authority to take or disturb property or facilities belonging to any public corporation, public utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, public utility, or common carrier, for the payment of compensation, if any at the sole cost of the port authority, subject to the following:

(i) If any restoration or duplication proposed to be made hereunder shall involve a relocation of such property or facilities, the new facilities and location shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

(ii) Provisions for restoration or duplication shall be described in detail in the resolution for appropriation passed by the port authority.

(8) Accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of a port or harbor or other navigation facilities, and sites therefor and comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such ports and other navigation facilities.

(9) Maintain such funds as it deems necessary.

(10) Direct its agents or employees, when properly identified in writing, and after at least five (5) days written notice, to enter upon lands within the confines of its jurisdiction in order to make surveys and examinations preliminary to location and construction of works for the purposes of the port authority, without liability of the port authority or its agents or employees



except for actual damage done.

(11) Sell or lease real and personal property not needed for the operation of the port authority and grant easements or rights-of-way over property of the port authority.

(12) Promote, advertise, and publicize the port and its facilities, provide traffic information and rate information to shippers and shipping interests, and appear before rate making authorities to represent and promote the interests of the port.

(13) Borrow money and secure the borrowing by a pledge of the following:

(A) Accounts receivable.

(B) A security interest in capital equipment for which the proceeds of the loan are used.

(C) Other security, including the excess of unobligated revenues over operating expenses.

(b) The term of a loan authorized by subsection (a)(13) may not exceed:

(1) thirty-five (35) years, in the case of a loan made before July 1, 2011; or

(2) twenty-five (25) years, in the case of a loan made after June 30, 2011.

SECTION 6. IC 8-10-5-8.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 8.2. (a) Before a port authority may exercise a power set forth in section 8 to develop, construct, finance, own, or operate a port or other facility on or adjacent to navigable waters, the port authority shall submit a report to the ports commission and the governor. The report must include the following information:**

(1) A description of the location of the port or other facility.

(2) A business plan for the port or other facility, including:

(A) financing mechanisms;

(B) planned commercial operations and activities;

(C) types, volumes, and modes of delivery of inbound and outbound cargoes; and

(D) anticipated dates of commencement of construction and operation.

(3) An analysis of the economic impact the port or other facility will have on ports or projects of the ports of Indiana under IC 8-10-1.

(4) A market study of the port or other facility that satisfies applicable standards of the United States Army Corps of Engineers. A market study conducted under IC 8-10-1-31



satisfies this requirement.

(b) Within ninety (90) days after receiving a report under subsection (a), the ports commission shall review and respond to the report and submit its response to the governor. Upon receipt of the response, the governor shall review the report and response and may:

(1) approve;

(2) disapprove; or

(3) request additional information or analysis concerning the port or other facility that is the subject of the report and response.

(c) A port authority may not develop, construct, finance, own, or operate a port or other facility that is the subject of a report under subsection (a) until the governor approves the report under subsection (b).

SECTION 7. IC 8-10-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) The board of directors of a port authority shall prepare or cause to be prepared a plan for the future development, construction, and improvement of the port and its facilities, including such maps, profiles, and other data and descriptions as may be necessary to set forth the location and character of the work to be undertaken by the port authority. Upon the completion of such plan, the board of directors shall cause notice by publication as provided in section 1 of this chapter, to be given in each county in which there is a political subdivision participating in the creation of the port authority, and shall likewise cause notice to be served upon the owners of the uplands contiguous to any submerged lands affected by such plan in the manner provided by law for service of notice in the levy of special assessments by municipal corporations, and shall permit the inspection thereof at their office by all persons interested. Said notice shall fix the time and place for the hearing of all objections to said plan which time shall be not less than ten (10) nor more than thirty (30) days from the date of last publication of said notice. Any interested person may file written objections to such plan, provided such objections are filed with the secretary of the board of directors at his the secretary's office not less than five (5) days prior to the date fixed for said hearing. After said the hearing, and subject to subsection (b), the board of directors may adopt such plan with any modifications or amendments thereto as the official plan of the port authority.

(b) If a plan prepared under subsection (a) includes work located on or adjacent to navigable waters, the plan is subject to



1 **review and approval under section 8.2 of this chapter. The board**
2 **of directors may not adopt a plan described in this subsection until**
3 **the governor approves the plan.**

4 SECTION 8. IC 8-10-5-14 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. Nothing contained
6 in this chapter shall:

7 (1) impair the provisions of law or ordinance directing the
8 payment of revenues derived from public property into sinking
9 funds or dedicating such revenues to specific purposes;

10 (2) impair the powers of any county, township, or municipal
11 corporation to develop or improve port and terminal facilities **that**
12 **are not located on or adjacent to navigable waters;** or

13 (3) impair or interfere with the exercise of any permit for the
14 removal of sand or gravel, or other similar permits issued by this
15 state or the United States.

16 SECTION 9. **An emergency is declared for this act.**

